IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 652 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDUBHAI N THAKOR - Appellant(s)
Versus
PRAHLADBHAI N BRAHMBHATT & 1 - Defendant(s)

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Appearance :
NOTICE NOT RECD BACK for Appellant(s) : 1,NOTICE SERVED for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS JYOTI BHATT for MR HARDIK C RAWAL for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 11/10/2006

ORAL JUDGMENT

1. The appellant is the original claimant. He has approached this Court by way of this appeal to seek enhancement in the compensation awarded by MACT, of Kheda

at Nadiad in MACP No. 735 of 1981. By judgment and award dated 19th April, 1983, the Tribunal awarded a sum of Rs.6,400=00 as compensation with proportionate costs and interest at the rate of 6% per annum from the date of the application till realization to the appellant. The Tribunal directed respondents no. 1 and 2 to satisfy the award jointly and severally. The Tribunal also gave directions with regard to deposit of the compensation amount, as and when paid by the respondents. According to the appellant, the compensation awarded by the Tribunal is inadequate and it is required to be enhanced.

2. The proceedings arose as a result of the vehicular accident that took place on 25th April, 1981 at about 11:00 a.m. On that day the appellant was riding on two wheeler as a pillion rider which was being driven by one Anilbhai. When the vehicle reached the place near V.B. Patel petrol pump of Santram Road, in the city of Nadiad, it was knocked down by the bus belonging to respondent no. 2, bearing registration no. 7316 which was driven by respondent no. 1. As a result of the same, the appellant fell off the two wheeler and sustained injuries on his right leg and other parts of the body. He, therefore, filed claim petition for compensation before the Tribunal on the ground that the injury was sustained

by, on account of the rash and negligent act of respondent no. 1. He averred in the petition that he had sustained fracture on the right leg and for treatment he was hospitalized in V.S. Hospital at Ahmedabad. It is also his say that twice he was operated upon and the leg was kept in plaster. The hospitalization was for 15 days. Even after his discharge from the hospital he had to visit the hospital on five occasions for follow up treatment. It is his say that because of the injury, he has suffered permanent disability and he is not able to pursue his normal functions properly. He, therefore, claimed a sum of Rs.25,000=00 by way of compensation. His claim was based on the expenses including medical treatment, transportation, pain, shock and suffering and also compensation for permanent disability.

3. The respondents resisted the claim. However, respondent no. 1 did no file any written statement, whereas respondent no. 2 filed the written statement, whereby all the averments made in the Claim Petition were denied. It was averred that the negligence was that of the driver of the two wheeler and not of respondent no. 1. According to respondent no. 1 at best, only negligence to the extent of 10% can be attributed to respondent no. 1.

4. At the hearing of the proceedings, the appellant filed his affidavit at Exh. 23. He was cross-examined by the respondents. Respondent no. 1 also gave his testimony on behalf of the respondents. His evidence is at Exh. 16.

5. On appreciation of the material produced before it, documentary as well as in the form of oral evidence, the Tribunal reached to the conclusion that there was ample indication available from the panchnama showing that it was the bus driven by respondent no. 1 which had gone on the wrong side of the road and had caused the accident. The Tribunal has also held that even if there was some negligence on the part of the driver of the two wheeler, so far as the appellant is concerned, it would hardly affect his claim, because there would be composite negligence of both the drivers. So far as the assessment of the compensation is concerned, the Tribunal held that the appellant had failed to produce necessary medical record to substantiate his say, regarding the injuries and the disablement. *Nevertheless*, the Tribunal has held that the appellant had sustained fracture and that he was hospitalized for 15 days. The Tribunal also held that on account of the injuries, he could not attend to his duty for a period of three months and, therefore, he suffered

the actual pecuniary loss of Rs.900/-, considering his monthly income of Rs.300/-. On the basis of this, the Tribunal awarded Rs.6,400=00 to the appellant as stated above.

6. The appellant has now filed this appeal for enhancement. Mr. M.S. Shah the then learned advocate appearing for the appellant has been elevated to the Bench of this Court and, therefore, notice to the appellant was issued by order dated 30th June, 2006 for making an alternative arrangement. The appellant has been served with the notice and he has chosen not to remain present. He has also not made any alternative arrangement till this date. In view of the same, this appeal is taken up for final hearing in his absence.

7. The record and proceedings of the case are available to the Court. I have heard Ms. Jyoti Bhatt learned advocate appearing for the respondents. She has resisted this appeal. She has submitted that the record shows that it was the driver of the two wheeler who was negligent and there was no fault of respondent no. 1. She has submitted that the driver of two wheeler did not possess valid licence and, therefore, it is obvious that he was not knowing the driving. She has submitted that

considering the facts of the case, the Tribunal has even erred in awarding a sum of Rs.6,400=00 to the appellant. According to her, when there is no documentary evidence available on record, the Tribunal ought to have dismissed the claim of the appellant. She has, therefore, prayed that this appeal be dismissed.

8. Ms. Bhatt has taken me through the judgment of the Tribunal. She has also drawn my attention to affidavit filed by the appellant and his cross-examination done by the learned advocate for the respondents. She has tried to assert that the accident occurred only due to negligence of the driver of two wheeler. However, on going through the evidence and the affidavit and the cross-examination of the appellant, it clearly appears that respondent no. 1 drove the vehicle rashly and negligently and that had caused the accident. The panchnama also corroborates this fact. In view of the same, I do not see any error having been committed by the Tribunal in holding that respondent no. 1 was negligent and responsible for causing injuries.

9. The main question is with regard to enhancement of the compensation. Whether the facts and circumstances warrant for enhancement, is the question which is

required to be considered. It is true that though the appellant in his affidavit has specifically stated that he had sustained fracture of the right leg and for which he was hospitalized and twice operated upon and, he has not produced any medical certificate to substantiate his contention. He has also stated that he had to remain in the hospital for 15 days and even after the discharge from the hospital he had to visit the hospital on five occasions for follow up treatment. Even for this no documentary evidence is produced by him. Of course, in the affidavit he has stated that on account of the fracture he has suffered permanent disability and he has not been able to pursue his normal routines properly. The record shows that he was given several chances by the Tribunal to obtain the medical record of his treatment from the hospital and to produce it before the Tribunal, in evidence. In spite of that he could not do so. He has of course, stated that he was not able to obtain the medical certificates including that of the disability, because the concerned medical officer attached to the V.S. Hospital demanded a sum of Rs.2,000=00 for giving these certificates and he also demanded Rs.1,500=00 for giving evidence before the Tribunal. The Tribunal has of course, believed the version of the appellant to the extent that he had suffered fracture and he had to remain

in the hospital for about 15 days. The Tribunal has also believed that because of the injuries he could not report for his job for a period of about three months. The Tribunal has also believed that the appellant was drawing a monthly salary of Rs.300=00. The question is when the Tribunal believed these facts, on the basis of the affidavit filed by the appellant, whether there was any justifying reason for not believing the fact regarding disability and other expenses incurred by the appellant. The reason that has been given by the Tribunal is that he did not produce any disability certificate nor did he produce any medical certificate indicating the nature of the injuries etc. I fail to understand that when the Tribunal has accepted the version regarding fracture of the leg and even respondent no. 1 has admitted this fact, there was no need for the Tribunal to look for other medical report. The Tribunal ought to have appreciated the handicap suffered by the appellant in procuring the material to substantiate his case. He has very frankly admitted before it that he was not able to produce the medical certificates including the disability certificate, because the concerned medical officer was not prepared to part with them, unless he paid Rs.2,000=00. There is a reason to accept this story of the appellant. When the factum of fracture suffered by

the appellant is duly proved, it is obvious that there would be medical record for his treatment regarding fracture with the V.S. Hospital, that could have been produced by the appellant had it been made available to the appellant. But that has not been produced by him. It is difficult to believe that when the claim petition is filed for obtaining compensation, he would not have made effort to go to V.S. Hospital and obtain this material. But he has not been able to produce it and the reason appears to be that the concerned medical officer did not part with it. The appellant has stated this fact on oath. If that be so, the Tribunal ought to have accepted this version of the appellant and should have directed the hospital authority to produce the record by issuing witness summons to the concerned medical officer. The Tribunal is empowered to resort to such action, but it has failed to do so. In view of the same, I am inclined to believe the fact that the medical record could not be produced by the appellant only because of the circumstances stated above. Thus, absence of such certificates should not have posed any problem to the Tribunal for assessing compensation on the count of disability.

10. The affidavit at Exh. 23 shows that the

appellant has categorically stated in it that because of the fracture of the right knee, he had undergone two operations and, in spite of the same, he had not recovered fully and had suffered some disability. He has stated that he was not able to do his normal routines. It is also obvious that on this aspect, there is no cross-examination by the respondents. In view of the same, this fact is required to be accepted, especially when it is stated on affidavit. I, therefore, presume that the disability would at least be to the extent of 10% vis-a-vis the body. The Tribunal has held that the monthly income of the appellant was Rs.300=00; he is aged 21 years; because of the permanent disability there is also future economic loss caused to him. The same is now required to be assessed. Considering the long span of active life before him, the income of the appellant would not have remained static but it would have increased with the passage of time. It would have increased up to Rs.450=00 per month. Considering 10% disability, the loss would have been Rs.45 per month x 12, the amount would come to Rs.540=00 and that would be the annual loss. Considering the young age of 21 years, the multiplier of 17 can safely be applied. Therefore, the future economic loss can be assessed at Rs.9180=00. Hence, the appellant is required to be awarded said amount for future economic

loss. The Tribunal has awarded Rs.500=00 for the expenses for medical treatment. This appears to be grossly on lower side and it is required to be increased to Rs.2,000=00. Hence, additional amount of Rs.1,500=00 is required to be awarded to the appellant. So far as compensation for pain, shock and suffering is concerned, the Tribunal has awarded Rs.5,000=00. But considering the fact that twice he had to undergo operation and had to remain in hospital for 15 days, under that head the appellant deserves compensation of Rs.7,000=00 i.e., additional sum of Rs.2,000=00. Thus, the appellant is entitled to receive Rs.12,680=00 by way of additional compensation and the respondents are directed to pay to the appellant by depositing the amount before the Tribunal together with proportionate costs and interest at the rate of 6% per annum on the additional amount, within a period of four month from the date of this order. Upon respondent depositing the amount as aforesaid the Tribunal shall issue notice to appellant and pay him the same by A/c. Payee cheque.

The net result is that the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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